

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Robin B. Stilwell, Circuit Court Judge
Case No. 2014-CP-10-2954

RECEIVED
FEB 03 2017
SC Court of Appeals

Appellate Case No. 2017-000081

DARRELL EDWARDS,Appellant,

v.

E. PAUL GIBSON, REISEN LAW FIRM, E. PAUL GIBSON PC, and JOHN DOES 1-5,
..... Respondents.

RESPONDENTS' PETITION TO
DISMISS APPEAL AND FOR SANCTIONS

Carl E. Pierce, II
Joseph C. Wilson, IV
Pierce, Hems, Sloan, & Wilson, LLC
P.O. Box 22437
Charleston, SC 29413
(843) 722-7733
Attorneys for Respondents

Other Counsel of Record:

Chauntel Demetrius Bland
463 Regency Park Dr.
Columbia, SC 29210
(803) 319-6262
Attorney for Appellant

Respondents/Defendants E. Paul Gibson, Reisen Law Firm, and E. Paul Gibson PC hereby petition the Court of Appeals to dismiss the appeal of Appellant/Plaintiff Darrell Edwards on the grounds that this matter has already been appealed twice and dismissed twice by the Court of Appeals. Accordingly, under principals of res judicata, the appeal should be dismissed.

PROCEDURAL HISTORY

Plaintiff Darrell Edwards brought this legal malpractice complaint on May 9, 2014. Plaintiff asserted that Defendants failed to pursue claims for Edwards under the Longshore and Harbor Workers Compensation Act and the South Carolina Workers Compensation Act. Defendants filed a Motion for Summary Judgment on December 5, 2014. Although there were several grounds for the motion, the primary ground was that Edwards' claims under the Longshore Act and the Workers Compensation Act were not time barred at the time that Edwards terminated Defendants as his attorney, so Edwards was free to find other counsel to pursue those claims. Indeed, Edwards is pursuing those claims to this day. Since Edwards did not lose the right to pursue his claims under the Longshore Act and the Workers Compensation Act, Defendants' decision to not file those claims while they were representing Edwards did not damage Edwards in any way.

At the hearing on January 15, 2015, the Honorable Markley Dennis granted Defendants' Motion for Summary Judgment. Judge Dennis held that there was no causal connection between the acts of Defendants and any purported loss to Plaintiff because 1) Plaintiff's claims still existed when he terminated Defendants, 2) Plaintiff had no viable claim under either the Longshore Act or the Workers Compensation Act to begin with, and 3) Plaintiff lost whatever claim he might have had when his subsequent attorneys failed to put insurance carriers on notice of a third party settlement. Judge Dennis issued a written order on January 27, 2015. Plaintiff both appealed and

filed a Motion for Reconsideration. After Plaintiff dismissed his first appeal, Judge Dennis denied Plaintiff's Motion to Reconsider on August 11, 2015.¹

Plaintiff appealed again on September 9, 2015. During this second appeal, Plaintiff failed to follow numerous South Carolina Appellate Court Rules and Orders from the Court of Appeals including:

1. Filing a Reply Brief that was solely based on an argument not presented in Appellant's Initial Brief or argued before the trial court and that relied upon material that was not designated to be included in the record on appeal.

2. Repeated failures to comply with the Court's deadlines, including making motions for an extension past the deadlines.

3. Failing to provide a filing fee for the original appeal, and for several subsequent motions.

4. Not providing accurate certificates of service. For instance, Plaintiff never served Defendants with Appellant's Designation of Matter to Be Included in the Record on Appeal.

5. Failing to file a proof of service of the record on appeal.

Due to this last failure (but no doubt also based on the cumulative failures), the Court of Appeals dismissed the appeal on May 9, 2016. Plaintiff took no action in response to this dismissal, and the Court of Appeals remitted the matter back to the Clerk of Court for Charleston County on May 25, 2016. After remittitur, on June 8, 2016, Plaintiff moved before the Court of

¹ This recitation is just a summary of the primary motions and orders in the underlying case. Plaintiff filed many additional motions seeking continuances, seeking to supplement the record after the fact, and seeking to dismiss the case after summary judgment was granted. If the Court is interested in a full recitation of Plaintiff's numerous efforts to revive his case after the grant of summary judgment, Defendants would refer the Court to Respondents' Initial Brief filed in Appellate Case No. 2015-001930.

Appeals to reinstate the appeal. On June 17, 2016, the Court of Appeals informed Plaintiff that it no longer had jurisdiction over the matter, so the motion was not granted.

More than three months after the remittitur, on September 1, 2016, Plaintiff filed a motion to reinstate the appeal in the Charleston County Court of Common Pleas. Plaintiff could not cite any basis for a trial court reinstating an appeal that had been dismissed by the Court of Appeals. Accordingly, on December 13, 2016, the Honorable Robin B. Stilwell denied the motion to reinstate the appeal. Stillwell Form 4 Order, Exhibit No. 1.²

Plaintiff has now filed his third Notice of Appeal in this matter. The Notice claims that Plaintiff is appealing not only Judge Stilwell's recent order denying the motion to reinstate the appeal, but also Judge Dennis's orders granting summary judgment, dated January 27, 2015, and denying Plaintiff's motion for reconsideration, dated August 13, 2015.

ARGUMENT

I. PLAINTIFF'S APPEAL IS BARRED BY RES JUDICATA.

With this appeal, Plaintiff is asking the Court of Appeals to reinstate an appeal that it has already dismissed and remitted back to the trial court. Put simply, Plaintiff cannot create jurisdiction in the Court of Appeals through the filing of successive appeals. Plaintiff failed to contest the dismissal of his appeal prior to remittitur, so the dismissal stood. Plaintiff cannot collaterally attack that dismissal by asking the trial court to reinstate the appeal, something it clearly does not have the power to do, and then appealing the inevitable denial of that motion to reinstate before the trial court. If Plaintiff were allowed to create this new belated review of a prior dismissal, he would be allowed to keep this matter alive in perpetuity with repeated motions to reinstate and appeals.

² Plaintiff inexplicably failed to attach Judge Stilwell's Order to his Notice of Appeal, which in and of itself is a violation of Rule 203(d)(1)(B)(ii).

Any number of legal principals prevent Plaintiff from perpetuating his dismissed action in this manner. First, Plaintiff is well past the time that he can appeal the underlying rulings by Judge Dennis, who denied Plaintiff's motion to reconsider on August 13, 2015, a year and half before this appeal. Rule 203(b)(1), SCACR (allowing thirty days to serve a notice of appeal). Moreover, Judge Dennis's rulings are the final judgments in this matter, and only those judgements are appealable. Kriti Ripley, LLC v. Emerald Investments, LLC, 404 S.C. 367, 746 S.E.2d 26, 32 (2013); S.C. Code Ann. § 14-3-330. Judge Stilwell's decision is neither a final judgment nor an order affecting a substantial right nor an interlocutory order, but was instead a ruling that he had no jurisdiction to reinstate an appeal in the Court of Appeals. As such, Judge Stilwell's order was not appealable.

Successive appeals are generally disallowed. Graham ads. Beckner, 24 S.C.L. 44 (Rice) (S.C. App. L. 1838); State v. Harrison, 122 S.C. 523, 115 S.E. 746 (1923); Rouse v. Rouse, 238 N.C. 568, 78 S.E.2d 451, 452 (1953) ("There must be an end to litigation."); Marchel v. Bunger, 15 Wash. App. 182, 547 P.2d 921, 922 (1976) ("An appeal cannot be taken from an order entered by a trial court in conformance with the remittitur of this court."). Such actions are generally considered barred by res judicata. Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.") (citation omitted); Gaer v. Bank of Baker, 113 Mont. 116, 122 P.2d 828, 830 (1942).

After remittitur, the trial court acquires jurisdiction but only to enforce the judgment and take any action consistent with the appellate court ruling. Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996).

Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form. 5 C.J.S.

Appeal and Error § 975(a) (1993). The decision of the appellate court is final as to all questions decided. Id. It is the duty of the trial court to follow the decision of the appellate court. Id.

Ackerman, 477 S.E.2d at 268; see also S.C. Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 551 S.E.2d 274, 279 (Ct.App. 2001) (“[A] trial court has no authority to exceed the mandate of the appellate court on remand.”); Prince v. Beaufort Mem'l Hosp., 392 S.C. 599, 709 S.E.2d 122, 125 (Ct.App. 2011) (“The mandate of the appellate court is jurisdictional. The trial court has a duty to follow the appellate court's directions.”) (citation omitted).

Thus, upon remand, the trial court is bound by the decision of the Court of Appeals dismissing the appeal. Moreover, the summary judgment issued by Judge Dennis is now final, Plaintiff's claims against Defendants are extinguished, and this action is concluded. There is nothing Plaintiff can do to resurrect this two and a half year old completely frivolous case.

Plaintiff's appeal also violates the law-of-the case doctrine which precludes a party from relitigating, after an appeal, matters that were expressly rejected by the appeals court.” Atkins v. Wilson, 417 S.C. 3, 788 S.E.2d 228, (Ct.App. 2016).

II. DEFENDANT IS ENTITLED TO SANCTIONS AGAINST PLAINTIFF AND HIS COUNSEL FOR FEES AND COSTS RELATED TO THIS APPEAL.

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

Rule 269, SCACR.

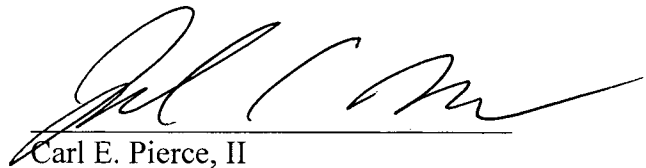
Summary judgment was granted in this matter over two years ago because, in short, it was a frivolous case. Since that time, Plaintiff and his attorneys have filed a series of frivolous and procedurally incorrect motions, petitions, and appeals. They have failed to serve filings on Defendants. They have failed to pay filing fees. They have failed to follow the South Carolina

Appellate Court Rules at every turn. All of these failures have resulted in more briefing and more attorney fees for Defendants. The time has come to start making Plaintiff and his attorneys pay for their own failures both procedurally and substantively.

The trial court did not err in holding that it could not reinstate an appeal that had been dismissed by the Court of Appeals. The trial court has no power to reverse the Court of Appeals' decisions. This is a frivolous appeal of a frivolous motion arising from a frivolous lawsuit. Plaintiff would ask that the Court of Appeals dismiss the appeal, and Plaintiff and his attorneys should be sanctioned under Rule 269, SCACR, and awarding attorneys fees for preparing this motion to Defendants.

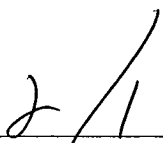
Based on the foregoing, Respondents would ask that the Court of Appeals dismiss this appeal and sanction Plaintiff and his attorneys.

Respectfully submitted,



Carl E. Pierce, II
Joseph C. Wilson, IV
Pierce, Hems, Sloan, & Wilson, LLC
P.O. Box 22437
Charleston, SC 29413
(843) 722-7733

Attorneys for Respondents


_____, 2017
Charleston, South Carolina

FILED

Darrell Edwards

E Paul Gibson

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PLAINTIFF(S)

JULIE J. ARMSTRONG
 CLERK OF COURT

DEFENDANT(S)

Submitted by:

BY _____

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This matter comes before the Court pursuant to Plaintiff's Motion to Reinstate an Appeal for Relief. Having considered the submissions of the parties and the arguments of counsel, the Motion is respectfully denied. The Court lacks subject matter jurisdiction to reinstate an appeal in the South Carolina Court of Appeals.

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:



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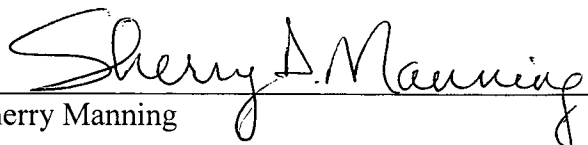
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..... Respondents.

PROOF OF SERVICE

I, Sherry Manning, an employee of Pierce, Hems, Sloan & Wilson, LLC, attorneys for the Respondents, do hereby certify that I have served a copy of Respondents' Petition to Dismiss Appeal on this the 1st day of February, 2017, by U.S. Mail to the attorneys identified below:

ATTORNEY FOR APPELLANT:

Chauntel Demetrius Bland, Esquire
463 Regency Park Drive
Columbia, SC 29210


Sherry Manning

PIERCE, HERNS, SLOAN & WILSON, LLC

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February 1, 2017

The Honorable Jenny Abbott Ktichings
Clerk, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

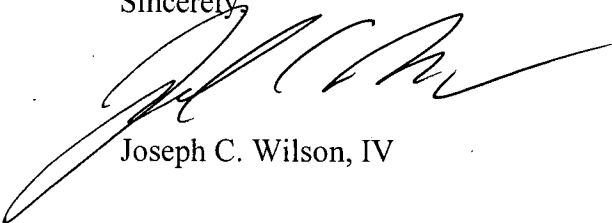
Re: *Darrell Edwards v. E. Paul Gibson, Reisen Law Firm and E. Paul Gibson PC and
John Does 1-5*
C/A No. 2014-CP-10-2954
Appellate Case No. 2017-000081
PHSW File No. D2529.01

Dear Ms. Allen:

Enclosed for filing please find the original and six (6) copies of Respondents' Petition to Dismiss Appeal in the above-captioned matter, including a Certificate of Service, and a check for \$25.00 to cover the filing fee. If you have any questions, please do not hesitate to contact me.

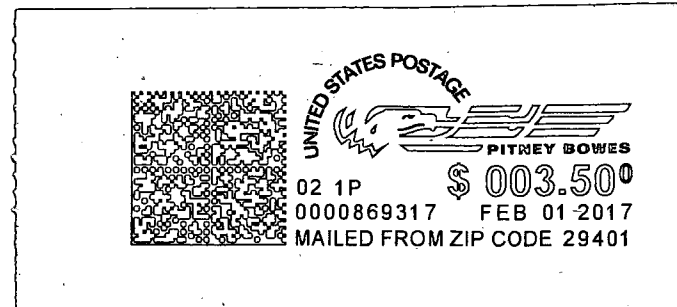
With kind regards,

Sincerely,


Joseph C. Wilson, IV

Enclosure

cc: Chauntel Demetrius Bland, Esquire



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SC Court of Appeals

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